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No. 87-1617

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1987

PAUL NEWMAN, GEORGE ROY HILL, and
PAN ARTS PRODUCTION CORPORATION,
Petitioners,

vs.

UNIVERSAL PICTURES, a division of
UNIVERSAL CITY STUDIOS, INC.,
and MCA INC.,
Respondents.

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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COUNTERSTATEMENT OF QUESTION PRESENTED FOR REVIEW*

Do plaintiffs suffer antitrust injury merely because their injuries allegedly "flow" from a purported antitrust conspiracy?

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* Respondent Universal City Studios, Inc. ("Universal") is a wholly owned subsidiary of respondent MCA INC. ("MCA"). MCA and/or Universal have the following partially owned subsidiaries and/or affiliates within the meaning of Supr. Ct. Rule 28.1: Cinema International Corporation N.V.; Cineplex Odeon Corporation; Mood Music Company, Inc.; Overland Stage, Inc.; Quantum Media, Inc.; Supreme Music Corporation; Town Cinema Investments Pty. Ltd.; Western Costume Co.

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COUNTERSTATEMENT OF THE CASE

The opinion of the Court of Appeals ("Newman") is nothing but a routine application of the antitrust injury principles set forth in numerous decisions of this Court. The Ninth Circuit's opinion proclaims no new rules of law and conflicts with no decisions of this Court or of any lower court. To the contrary, Newman applies settled principles of antitrust law and holds simply that a plaintiff who alleges no injury as a participant in the market allegedly restrained, but instead alleges in conclusory terms only that his injury somehow "flows" from a price-fixing conspiracy, has not met the antitrust injury requirement.

Petitioners brought this suit under Section 4 of the Clayton Act, 15 U.S.C. § 15, seeking damages for respondents' alleged violations of Sections 1 and 2 of the Sherman Act, 15 U.S.C. §§ 1 and 2, and alleging breach of contract and breach of fiduciary duty under state law. The action seeks to recover certain payments allegedly due to petitioners Paul Newman ("Newman") and George Roy Hill ("Hill") under several written contracts between them and respondent Universal Pictures ("Universal") whereby petitioners agreed to render acting and directing services in two motion pictures produced by Universal in the 1970's, and pursuant to which petitioners already have received millions of dollars (CR 13, p. 1 (lines 17-22)). The Complaint attempts to invoke federal jurisdiction over this breach of contract action, and to recover treble damages for the alleged breach, by charging that several years *after* entering into the above-described contracts, respondents formed a conspiracy with several third parties (not named as defendants) which deprived petitioners of the additional payments which they claim are contractually due. The District Court and Court of Appeals both properly ruled that these allegations fail to establish the requisite antitrust injury necessary to permit petitioners to invoke federal antitrust remedies.

The Complaint alleges: In 1972 Newman negotiated and entered into a written agreement with Universal under which Universal employed Newman as an actor in the motion picture "The Sting." Also in 1972, Hill and Universal entered into a written agreement under which Universal employed Hill to direct "The Sting." These contracts provided that Universal would pay Newman and Hill sums equal to a percentage of the contractually defined "net profits" and/or "gross proceeds" received by Universal for "The Sting."

In 1974 and 1976, Newman and Hill entered into two new written contracts with Universal to render their acting and directing services, respectively, in the motion picture "Slapshot." These agreements entitled Newman and Hill to sums equal to a percentage of Universal's contractually defined net profits and/or gross proceeds from "Slapshot." Newman/Hill allegedly performed their services as required by all of the foregoing contracts, and the films were produced and released in theatres, during the 1970's.

Beginning in the late 1970's or early 1980's, after the production and theatrical release of these films, video disc players and video cassette recorders developed as a new medium for exhibition of films such as "The Sting" and "Slapshot." Since the early 1980's Universal has received revenues from the sale and/or rental of discs and cassettes of "The Sting" and "Slapshot."

Petitioners' Complaint further alleges that in 1981 Universal and several other motion picture studios, not named as defendants here, commenced a conspiracy to misinterpret and incorrectly apply the "net profits" and "gross proceeds" definitions contained in the studios' then existing contracts with profit participants. The alleged purpose of the conspiracy was to interpret these contractual definitions in a manner which would decrease the share of video disc and cassette revenues paid to petitioners and other profit participants under these previously negotiated agreements ("pre-conspiracy contracts").[1] The conspiracy to fix the interpretation of pre-

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[1]Specifically, the Complaint alleges that beginning in 1981 respondents conspired with other motion picture studios to minimize the video cassette revenues paid to profit participants such as petitioners by "allocation of all or most of said revenues as distribution revenues, as opposed to production revenues." (Cplt ¶ 20.) This conspiracy

conspiracy contracts, petitioners allege, constitutes price-fixing and entitles them to treble damages under the antitrust laws, as well as damages for breach of contract. Petitioners do not, however, allege injuries with respect to contracts formed *after* the conspiracy began ("post-conspiracy contracts"), *i.e.*, that they were injured by any inability freely to negotiate the terms and prices of post-conspiracy contracts.

Respondents moved the district court pursuant to Fed. R. Civ. P. 12(b)(6) to dismiss petitioners' Sherman Act claims on the grounds that: (1) the alleged conspiracy to misinterpret and/or breach previously formed contracts lacks any anticompetitive effects, since competition for the artists' services ended when the contracts were formed, long before the market restraint allegedly began, and (2) if petitioners also are attempting to allege a conspiracy to fix prices offered for post-conspiracy contracts, their alleged damages do not satisfy the antitrust injury requirement.

The District Court dismissed the Sherman Act claims on these grounds, and dismissed the state law claims for lack of pendent jurisdiction. The Ninth Circuit affirmed, holding that the alleged conspiracy to fix the interpretation of previously formed contracts lacks the anticompetitive effects necessary to support an antitrust claim, and that petitioners did not suffer antitrust injury resulting from any alleged conspiracy to fix prices offered for post-conspiracy contracts.[2] Petitioners subsequently filed, and

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allegedly "decreased the profits and/or proceeds paid to plaintiffs to which they would otherwise be *contractually* entitled (emphasis added)," thereby purportedly resulting in a breach of contract and an antitrust violation (Cplt ¶ 30).

[2]The Ninth Circuit also implicitly recognized that petitioners — claiming injury only as parties to pre-conspiracy contracts — are not

the Ninth Circuit denied, a Petition for Rehearing and Hearing En Banc. Petitioners then filed this Petition for a Writ of Certiorari, seeking review of the Court of Appeals' holding that the injury alleged in petitioners' Complaint does not constitute antitrust injury. Significantly, petitioners do not seek review of the Ninth Circuit's holding that a conspiracy to misinterpret and/or breach pre-conspiracy contracts lacks the anticompetitive effects necessary to support an antitrust claim.[3]

REASONS FOR DENYING THE WRIT

The petition is remarkable or unusual only in one regard — it involves Paul Newman. In all other respects, it is indistinguishable from every other meritless petition brought by parties dissatisfied with the result below. The petition should be denied because the Court of Appeals' decision does not (1) conflict with the decisions of this Court or of any other federal court, (2) involve any unsettled question of law, or (3) involve any issue of public interest or significance.

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the "proper party" under the factors of *Associated General Contractors, Inc. v. California State Counsel of Carpenters*, 459 U.S. 519, 103 S.Ct. 897 (1983) to challenge a conspiracy to fix the price offered for post-conspiracy contracts (*see* discussion in note 9, *infra*).

[3]In June, 1987, after the Court of Appeals affirmed the dismissal of their antitrust claims, petitioners commenced an action in California state court for breach of contract and breach of fiduciary duty, based on the same facts as alleged here (Oppos. to Pet. for Rehearing p. 13, App. A thereto). Petitioners already have commenced discovery in this state court action.

I.

The Court of Appeals' Decision Does Not Conflict With the Applicable Decisions of this Court or Involve a Previously Unsettled Question of Law

As the Ninth Circuit correctly recognized, petitioners' "fundamental problem is that Newman and Hill entered into their contracts for 'The Sting' and 'Slapshot' before the alleged conspiracy arose" (Pet. App. B 7), and thus petitioners do not claim any injury as competitors or participants in the market allegedly restrained, i.e., the post-conspiracy market for actors' and directors' services. Most notably, petitioners do *not* allege that the market for actors' and directors' services was restrained in the 1970's, when they entered into their contracts for "The Sting" and "Slapshot." In fact, petitioners concede that all competition for their services in these films was completed long before the alleged conspiracy arose (Pet. 7). Nor do they allege injuries relating to any contracts which were negotiated or formed after the alleged conspiracy arose (Pet. App. B 8).

Petitioners allege *only* that a conspiracy to fix the terms and prices offered for personal services contracts formed in the *1980's* somehow "resulted" in an improper reduction in the monies paid to them for their services in "The Sting" and "Slapshot," in violation of contracts which they freely negotiated with Universal in the *1970's*. As the Court of Appeals properly held, however, and as explained below, this allegation does not satisfy the antitrust injury requirement of Section 4 of the Clayton Act.[4]

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[4]Petitioners' descriptions of the alleged conspiracy are inconsistent. First they describe the alleged price-fixing conspiracy as one conspiracy applying "both to artists who received residual payments under existing profit participation agreements as of 1981 and to those who signed subsequent agreements" (Pet. p. 4). Later, petitioners

The concept of antitrust injury, first described by the Court in *Brunswick Corp. v. Pueblo Bowl-O-Mat, Inc.*, 429 U.S. 477, 97 S.Ct. 690 (1977), and carefully followed by the Ninth Circuit here, requires a plaintiff to allege "an injury of the type the antitrust laws were intended to prevent and that flows from that which makes defendant's acts unlawful." 429 U.S., at 489. As this Court has held, moreover, only injuries which reflect interference with the Sherman Act's purposes of assuring "to customers the benefits of price competition" and protecting "the economic freedom of participants in the relevant market" are the type the antitrust laws were designed to prevent.[5]

Applying *Brunswick,* the Ninth Circuit concluded that petitioners' injuries are not the type the antitrust laws were designed to prevent, correctly reasoning that because petitioners claim no injuries from contracts *formed*

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appear to allege only a conspiracy to fix prices for post-conspiracy contracts, asserting that they suffered their alleged injuries because respondents "manipulated Newman's prices *in furtherance* of the price-fixing conspiracy (emphasis added)." (Pet. p. 14.) The Court of Appeals saw two alleged conspiracies, one to refuse to pay sums due under pre-conspiracy contracts, and one to fix prices offered for post-conspiracy contracts (Pet. App. B 6-8). As petitioners have acknowledged, however, whether the conduct alleged is described as two conspiracies, one conspiracy with two components, or a single component conspiracy causing them injuries in furtherance thereof, petitioners still are required to show that the conduct alleged caused them antitrust injury. *Matsushita Elec. Indus. Co. v. Zenith Radio,* 475 U.S. 574, 582-85, 106 S.Ct. 1348, 1354-55 n. 7 (1986), *citing Associated General Contractors,* 459 U.S., at 538-40, 103 S.Ct., at 908-09; and *Brunswick Corp. v. Pueblo Bowl-O-Mat, Inc.*, 429 U.S. 477, 488-89, 97 S.Ct. 690, 697 (1977).

[5] *Associated General Contractors,* 459 U.S., at 538, 103 S.Ct., at 908-09; *see also, Matsushita,* 475 U.S., at 582-84, 106 S.Ct., at 1354; *Cargill, Inc. v. Monfort of Colorado, Inc.*, ____ U.S. ____, 107 S.Ct. 484 (1986) (reaffirming antitrust injury requirement).

during the existence of the alleged price-fixing conspiracy, the alleged harm to their preconspiracy contract interests is not sufficiently, if at all, connected to the market restraint alleged.[6]

Petitioners nevertheless assert, without any factual explanation or supporting allegations, that the alleged breaches of their contracts for "The Sting" and "Slapshot" constitute antitrust injury because those injuries allegedly are a "direct result" of the conspiracy to fix prices for post-conspiracy contracts. Petitioners are wrong. Mere unsupported and conclusory allegations that petitioners' injuries are "directly" or "proximately" caused by the alleged price-fixing conspiracy do *not* satisfy the antitrust injury requirement. Petitioners must allege "more than injuries causally linked to an illegal presence in the market," *Brunswick,* 429 U.S., at 489, 975 S.Ct., at 697. As noted above, they also must prove injury of the type the antitrust laws were intended to prevent *and* that flows from that which makes defendants' acts unlawful. "The injury should reflect the *anticompetitive effect* either of the violation or of *anticompetitive acts* made possible by the violation (emphasis added.)." *Id.,* at 489; 97 S.Ct., at 697.[7]

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[6]In so ruling, the Ninth Circuit correctly applied the standards of *Hishon v. King & Spalding,* 467 U.S. 69, 73, 104 S.Ct. 2229 (1984), where this Court declared that a motion to dismiss a complaint for failure to state a claim under Fed. R. Civ. P. 12(b)(6) should be granted "only if it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations." (Pet. App. B 5, 7-8).

[7]*See also, Matsushita,* 475 U.S., at 588-89, 106 S.Ct., at 1357; *Cargill,* ____U.S., at ____, 107 S.Ct., at 489; *Associated General Contractors,* 459 U.S., at 534-35, 103 S.Ct., at 906-07 (reaffirming that allegations of injury merely causally related to antitrust violation not sufficient).

Nor are petitioners correct in stating (Pet. 6) that the Ninth Circuit "assumed that the price-fixing conspiracy directly and proximately caused" petitioners' alleged injuries. To the contrary, it held that petitioners have not urged any facts supporting a causal connection between their injuries and an antitrust violation (Pet. Ap. B. 7-8). Indeed, petitioners never have alleged, or even proffered in their briefs to the lower courts or to this Court, facts explaining the alleged causal link between a conspiracy to depress prices offered for post-conspiracy contracts and the alleged harm to their pre-conspiracy contractual interests. As this Court noted in *Associated General Contractors,* courts may not "assume that the [plaintiff] can prove facts that it has not alleged or that the defendants have violated the antitrust laws in ways that have not been alleged." 459 U.S., at 526, 103 S.Ct., at 902.

Petitioners also contend that *Newman* is inconsistent with *Blue Shield of Virginia v. McCready,* 457 U.S. 465, 102 S.Ct. 2540 (1982), because under their reading of *McCready* petitioners purportedly are required to allege only that their injuries "flow" from respondents' alleged conduct "in furtherance of the conspiracy." (Pet. pp. 14-15.) Petitioners again are wrong. The antitrust injury requirement is *not* satisfied merely by pleading damage which somehow merely "flows" from an antitrust violation, as this Court in *McCready* and *Associated General Contractors,* 459 U.S., at 538-40, 103 S.Ct., at 908-10, clearly held.

In *McCready,* plaintiff was a consumer in the market for psychotherapeutic services who refused to cooperate with the defendant medical insurer in carrying out a boycott of psychologists. As a sanction for plaintiff's refusal to boycott psychologists, she was forced to pay increased costs for psychotherapeutic services when the defendant denied her insurance coverage for treatment by

a psychologist. *Id.*, at 483, 102 S.Ct., at 2550. The Court found that plaintiff alleged antitrust injury because she was injured as a consumer in the relevant market, and her injury was "a necessary step in effecting the ends of the alleged conspiracy," the "very means by which [defendant] sought to achieve its illegal ends." *Id.*, at 479, 102 S.Ct., at 2548.

In stark contrast, petitioners here do not allege injuries suffered as consumers or participants in the market allegedly restrained, since they claim no damages from contracts formed after commencement of the alleged conspiracy. Nor do they allege injuries which were "a necessary step" in the conspiracy, or "the very means" by which the conspiracy was achieved. In short, petitioners' alleged injuries are patently dissimilar to those which this Court in *McCready* found to constitute antitrust injury.

As *McCready* itself makes clear, the Clayton Act does *not* provide antitrust remedies for all injuries — such as those alleged by petitioners — which allegedly "flow" from conduct related to an antitrust violation. 457 U.S., at 476-77. ("Congress did not intend to allow every person tangentially affected by an antitrust violation to maintain an action to recover threefold damages for injury to his business or property.") In addition to being causally connected to an antitrust violation, an antitrust plaintiff's alleged injuries also must be the type of injuries Congress intended to redress in enacting the antitrust laws.[8] Peti-

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[8]Under petitioners' mistaken interpretation of *McCready*, a pedestrian struck by a motorist hurrying to carry out the illegal objectives of an antitrust conspiracy would suffer the requisite antitrust injury, since that pedestrian's injuries arguably would flow from conduct in furtherance of the conspiracy. Such an extreme result clearly is not permitted by this Court's decisions. *See, e.g., Associated General Contractors*, 459 U.S., at 538-40, 103 S.Ct., at 908-10 (citing and explaining *McCready*).

tioners' ordinary state law breach of contract claims clearly do not suffice.[9]

II.

The Newman Decision Does Not Adopt A "Mirror Image" Test or Conflict With Other Lower Court Decisions

In an effort to create the impression that an intercircuit conflict exists as to the proper test for antitrust injury, petitioners assert that *Newman* adopted and applied a

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[9]As the Court of Appeals' decision recognized, petitioners' injuries also fail to satisfy the more exacting "property party" criteria set forth in *Associated General Contractors* (*see* Pet. App. B 7-8 n. 1). Under the analytical framework established in *Associated General Contractors*, "[a] showing of antitrust injury is necessary, but not always sufficient, to establish standing under § 4, because a party may have suffered antitrust injury but may not be a proper plaintiff under § 4 for other reasons." *Cargill, Inc. v. Monfort of Colorado, Inc.*, ____ U.S. ____, 107 S.Ct. 484, 489 (1986). Applying *Associated General Contractors* to petitioners' alleged injuries, petitioners are not proper parties for at least two of these other reasons: First, petitioners' alleged injuries with respect to their pre-conspiracy contracts are connected only very remotely, if at all, to the antitrust violation alleged. The tenuous nature of this causal connection is highlighted by the fact that whether petitioners have suffered any injury at all is entirely dependent on the outcome of the contract interpretation issue, *i.e.*, if petitioners have been compensated correctly under the language of their pre-conspiracy contracts for "The Sting" and "Slapshot," they have suffered no lost revenues about which to complain. Second, there is a large identifiable class of persons, *i.e.*, artists purportedly unable freely to negotiate contracts *formed during the existence* of the 1980's conspiracy, who would be far more directly affected by the alleged conspiracy than petitioners, and should be highly motivated to challenge this alleged antitrust conspiracy. Hence, the antitrust violation, if one exists, is not likely to go undetected or unremedied by the denial of proper party status to petitioners.

new, more restrictive test for antitrust injury, which petitioners coin the "mirror image" test (Pet. 7-8). Yet the Court of Appeals opinion neither mentions a "mirror image" test nor applies a more restrictive concept of antitrust injury. To the contrary, as discussed in Section I, *supra, Newman* does nothing more than recite and apply the language and principles of antitrust injury articulated by this Court in *Brunswick,* and affirmed by the Court in subsequent decisions. Notwithstanding petitioners' unsupported, sweeping generalization to the contrary, no federal court has adopted a more restrictive "mirror image" test for antitrust injury, a test which petitioners themselves have invented.

Moreover, petitioners are mistaken in citing two 1982 Seventh Circuit cases as purported examples of a conflict between the decisions of the Seventh and Ninth Circuits, *i.e., Repp v. F.E.L. Publications, Ltd.,* 688 F.2d 441 (7th Cir. 1982), and *In re Industrial Gas Antitrust Litigation,* 681 F.2d 514 (7th Cir. 1982). Both of these outdated Seventh Circuit decisions applied the so-called "target area" test which later was disapproved by this Court in *Associated General Contractors,* 459 U.S., at 536, 103 S.Ct., at 908, n. 33. Hence, these decisions no longer are viable precedents either in the Seventh Circuit or in other circuits. Any intercircuit conflict previously created by the application of the target area test was resolved by this Court's decisions in *Associated General Contractors,* 459 U.S. 519, 103 S.Ct. 897; *Matsushita,* 475 U.S. 574, 106 S.Ct. 1348; and *Cargill,* ____ U.S. ____, 107 S.Ct. 484, which eliminated the prior doctrinal confusion.

The Ninth Circuit in *Newman,* as in each of its other decisions involving the antitrust injury requirement,[10] unerringly applied the test announced by this Court in *Brunswick, i.e.,* whether the alleged injuries are the type of injuries the antitrust laws were designed to prevent. *Newman's* routine application of *Brunswick* conflicts with no other court of appeals or district court decision, and creates no conflict between Ninth Circuit decisions, as the lower court acknowledged by denying the petition for an *en banc* hearing.[11]

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[10]*See Lucas v. Bechtel Corp.,* 800 F.2d 839 (9th Cir. 1986); *Eagle v. Star-Kist Foods, Inc.,* 812 F.2d 538 (9th Cir. 1987) (applying *Brunswick* requirement).

[11]As they did in their petition for rehearing in the Court of Appeals, petitioners here claim that *Aurora Enterprises, Inc. v. National Broadcasting Co., Inc.,* 688 F.2d 689 (9th Cir. 1982), and *Mulvey v. Samuel Goldwyn Productions,* 433 F.2d 1073 (9th Cir. 1970) conflict with *Newman.* Petitioners are mistaken. In both *Aurora* and *Mulvey,* profit participants alleged that competition for licenses to exhibit their own films was restrained by block-booking conspiracies which forced exhibitors who wished to obtain licenses to exhibit plaintiffs' films also to purchase exhibition licenses for other less desirable films. Thus, plaintiffs in *Aurora* and *Mulvey* alleged illegal restraints *in the market for licensing of their own films,* which deprived them of revenues from such licensing. In sharp contrast, petitioners here do not claim any restraint in the market for *licensing* of their films, nor do they claim that the market for their *services* in "The Sting" and "Slapshot" was restrained, since they allege that the "price-fixing" conspiracy arose after their contracts were negotiated and formed.

III.

The Newman Decision Does Not Involve Any Issue of Public Interest

Petitioners assert that *Newman* is a case of enormous public significance, presenting the Court with a "perfect opportunity" to issue new guidelines for antitrust injury analysis (Pet. 16-20). This contention is completely devoid of merit. *Newman* is nothing more than a private contractual dispute regarding the proper allocation of receipts among the parties to those contracts, and involves a conventional application of this Court's well-established antitrust injury requirement to simple, albeit somewhat peculiar, factual allegations. The Court of Appeals' decision marks no change in antitrust injury analysis and prevents no actual victims of a price-fixing conspiracy from pursuing antitrust remedies.

Nor are the lower courts in need of any "new guidelines" for antitrust injury analysis.[12] Petitioners' contention (Pet. 17-19) that the lower courts are misapplying this Court's antitrust injury requirement to eviscerate the substantive antitrust laws is simply untrue. Petitioners cite no case or commentary which articulates or applies a more restrictive antitrust injury test that undermines enforcement of the antitrust laws.[13]

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[12]Petitioners, while expressing the need for "new antitrust injury guidelines," give no suggestion in their petition as to the nature of the new guidelines which purportedly are needed. In the Court of Appeals, however, petitioners mistakenly attempted to resurrect the defunct "target area" test as the correct standard for determining whether they are a "proper party" under Clayton Act § 4. (Appellants' Open. Brief p. 25).

[13]Petitioners cite three Seventh Circuit cases which they claim exemplify the lower courts' use of antitrust injury to rewrite substantive antitrust law, *i.e., Jack Walters and Sons Corp. v. Morton Bldg.,*

Even if petitioners could point to lower court decisions which misapply the concept of antitrust injury to alter substantive antitrust law, *Newman* clearly is not such a case. The Court of Appeals' decision contains no suggestion of an attempt to eviscerate substantive antitrust laws or to alter in any manner the necessary elements of a price- fixing violation. In fact, *Newman* acknowledged that price-fixing is a *per se* antitrust violation and that under the *per se* rule a plaintiff need not prove the anticompetitive effects of the violation alleged (Pet. App. B 7). The court also correctly recognized, however, that even plaintiffs who allege *per se* violations must show antitrust injury from the illegal conduct alleged. The Ninth Circuit assumed that the alleged price-fixing conspiracy "would clearly have affected competition for film contracts entered into during the existence of the conspiracy," and invited petitioners to assert antitrust injuries with respect to such post-conspiracy contracts (Pet. App. B 8). Petitioners have not done so.

In sum, the *Newman* decision serves to promote, not undermine, the public interest in proper enforcement of the antitrust laws. By applying the limits which this

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Inc., 737 F.2d 698, 708-09 (1984); *Local Beauty Supply, Inc. v. Lamaur, Inc.*, 787 F.2d 1197 (1986); and *In re Industrial Gas Antitrust Litigation*, 681 F.2d 514, 519 (1982) (Pet. 18 fn. 13). None of these cases is before the Court on this petition, however, and none seeks to rewrite substantive antitrust law. *Jack Walters* simply follows the holding of *Brunswick* that injury caused by an *increase* in competition is not antitrust injury. *Local Beauty* assumes that the conduct alleged *is* a substantive antitrust violation, but finds that the plaintiff is not the proper party to challenge it. And *In re Industrial Gas* makes no attempt to alter the offense of price-fixing alleged there, and is no longer a viable precedent at any rate since it applied the now defunct "target area" test which subsequently was disapproved by this Court in *Associated General Contractors*, 459 U.S., at 536 n. 33, 103 S.Ct., at 907-08.

Court has established for antitrust actions under Section 4 of the Clayton Act, *Newman* ensures that only those suffering the type of injuries the antitrust laws were designed to prevent can sue to enforce those laws. *Newman* effects no harm to the public interest and deals no injustice to petitioners. As the Court of Appeals correctly perceived, this litigation involves nothing more than a private dispute as to the proper interpretation of the parties' contracts, a dispute which the Court of Appeals appropriately left for resolution in petitioners' ongoing state court action.

CONCLUSION

The Petition for Writ of Certiorari should be denied.

Respectfully submitted,
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PROOF OF SERVICE BY MAIL

I am a citizen of the United States and a resident of the City and County of Los Angeles; I am over the age of eighteen years and not a party to the within action; my business address is: 1706 Maple Avenue, Los Angeles, California.

On May 20, 1988, I served the within Respondents' Brief in Opposition to Petition for Writ of Certiorari in re: "Paul Newman vs. Universal Pictures" in the United States Supreme Court, October Term 1987, No. 87-1617;

On the Parties in said action, by placing Three copies thereof enclosed in a sealed envelope with postage fully prepaid, in the United States post office mail box at Los Angeles, California, addressed as follows:

Maxwell M. Blecher
Blecher & Collins
611 West 6th Street
28th Floor
Los Angeles, California 90017

All Parties required to be served have been served.

I certify under penalty of perjury, that the foregoing is true and correct.

Executed on May 20, 1988, at Los Angeles, California

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